IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 583 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WAGE-WIRES SCREEN LTD.

Versus

PARMAR RAMANBHAI LALLUBHAI

Appearance:

1. Special Civil Application No. 583 of 1994

MR NILESH A PANDYA for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Nilesh Pandya for the petitioner. The respondent workman has been served but has not appeared before this Court either in person or

through any advocate.

In this petition, the petitioner has challenged the award made by the labour court, Godhra in Reference No. 956 of 1990 (Old No. 823 of 1989) dated 1st September, 1993 wherein the labour court has granted reinstatement with continuity of service and with full back wages for the intervening period in favour of the respondent workman. This Court, while issuing rule, has granted the ad.interim relief in terms of para 15(B) of the petition qua back wages only by order dated 2nd February, 1994.

Today, when the matter has been called out, learned advocate Mr. Pandya has remained present for the petitioner. The respondent has not remained present before this court. However, considering that this is an old matter, has been taken up for hearing in absence of the respondent workman.

During the course of hearing, learned advocate Mr. Pandya has submitted that the respondent workman has left the job at his own and that the services of the respondent were never terminated by the petitioner. The petitioner has served the respondent with a show cause notice dated 27th June, 1989 to which the reply was given by the respondent on 17th July, 1989 and, thereafter, the respondent has not come forward to attend the work. He has submitted that during the pendency of the reference, one purshis was given by the petitioner wherein the petitioner has submitted before the labour court that if the workman is prepared to join the duty, he can do so without prejudice to his rights and contentions. Such purshis was filed by the petitioner before the labour court on 5th January, 1990. He has submitted that inspite of the said purshis, the respondent has not reported for duty. He has submitted that not only that but though the interim relief has not been granted by this court against the reinstatement, the respondent workman has not reported so far for duty and, therefore, the labour court has committed error in passing the award of reinstatement against the petitioner only on the basis of the affidavit filed by the workman, in absence of the petitioner.

I have perused the award passed by the labour court. From the perusal of the award in question, it appears that the said award has been passed by the labour court, Godhra in absence of the petitioner. As per Rule 26A of the Industrial Disputes Act (Gujarat) Rules, 1966, the petitioner is having a remedy to approach the labour

court concerned for setting aside such an award made in its absence. Such an application for setting aside such ex parte award is required to be moved within thirty days from the date of receipt of copy of the award. As per Rule 26B of the said Rules, the labour court is also empowered to pass interim orders if such an application is moved before the concerned labour court. Therefore, as per the provisions of the said Rules, the petitioner is having an alternative equally efficacious remedy for setting aside the ex parte award made by the labour court concerned and, therefore, present petition challenging an ex parte award cannot be entertained by this Court on that ground alone and is, therefore, required to be dismissed on that ground without observing anything on merits.

Learned advocate Mr. Pandya has submitted that the petitioner will approach the labour court, concerned within three months from the date of receipt of copy of this order by filing application under Rule 26A of the said Rules. He has prayed that the interim relief granted by this Court on 2nd February, 1994 may be ordered to continue for a further period of three months so as to enable the petitioner to approach the labour court under Rule 26A alongwith an application for interim relief under Rule 26B of the said Rules. He has further submitted that there is delay in filing such an application before the labour court and, therefore, the labour court may be directed to consider the period of pendency of this petition while considering an application for condonation of delay that may be moved by the petitioner before the labour court.

I have considered the submissions and these aspects of the matter. It is open for the petitioner to file an application for condonation of delay alongwith an application for stay within three months from the date of receipt of copy of this order. As and when such an application is moved by the petitioner before the labour court concerned alongwith stay application, such application for condonation of delay shall be decided by the labour court while considering the pendency of this petition before this Court. Meantime, ad.interim relief granted by this court on 2nd February, 1994 shall continue to operate for a period of three months so as to enable the petitioner to approach the labour court concerned under Rule 26A of the said Rules.

With these observations and directions, this petition is dismissed. Rule is discharged. Ad.interim relief granted earlier is vacated subject to aforesaid

directions. There shall be no order as to costs.

30.1.2002.   (H.K. Rathod,J.)

Vyas